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STATEMENT OF THE CASE

This is an action instituted on January 29, 1965 by the respondents, 225 individuals, formerly employed at the Carrier Corporation Syracuse New York Plant. The suit seeks compensatory and punitive damages against Carrier Corporation, United Steelworkers of America, AFL-CIO, Sheet Metal Workers' International Association, AFL-CIO and its Local 527, based upon allegations growing out a labor relations imbroglio which occurred during the years 1959 and 1960 at said plant (App. 1-3). No Answer has been filed by any of the defendants in this suit, nor have any pretrial discovery proceedings occurred. Pursuant to the opinion of the United States Court of Appeals for the Second Circuit, plaintiff was permitted to file a further amended complaint within 30 days from the issuance of the Second Circuit's judgment and mandate (App. 34). It has been filed. For the first time responsive pleadings directed to the allegations of the complaint, as distinguished from motions to dismiss the complaint on its face, will be filed by the defendants.

The nature of the cause of action against the defendants relates to a certain series of events which occurred in the years 1959-1960 at the Carrier Plant in Syracuse, New York (App. 1).

Plaintiffs for sometime prior to March 2nd, 1960 were employed as hourly production and maintenance workers by Carrier at its plant in Syracuse, New York. Some 20 years prior, the employees of Carrier had organized into an unincorporated association known as the "Carrier Employees Association" with the general purpose of the association being those usually performed by a labor union. Thereafter the Carrier Employees Association affiliated with

the American Federation of Labor and became known as Federal Labor Union No. 23983 directly affiliated with the American Federation of Labor. Over the course of the years, that union entered into successive collective bargaining agreements with Carrier (App. 3, 37).

On November 8th, 1956 the Federal Labor Union and Carrier entered into a collective bargaining agreement to become effective September 4th, 1956. This contract provided that it would remain in force for three years from its effective date and that it would be extended for an additional three year period unless one of the parties gave notice of termination prior to September 30th, 1959. No notice of termination of the contract was given prior to said date and it was extended for an additional three year period (App. 3 - 4).

Subsequent to the execution of the contract, the American Federation of Labor and the Congress of Industrial Organizations merged, with the Federal Labor Union continuing as an affiliate of the AFL-CIO. On June 21st, 1959, representatives of the parent AFL-CIO held meetings with the Federal Labor Union at which time the representatives of the Federal Labor Union voted to affiliate with an international union of the AFL-CIO rather than to remain a directly chartered local union. As a result of the vote to affiliate, a number of international unions attempted to enlist the affiliation, among them being defendants Steel Workers and Sheet Metal Workers International. The election was held on July 1st, 1959 and the majority vote favored affiliation with Steel Workers. Thereafter on October 2nd, 1959 a charter was issued to the Federal Labor Union by the Steel Workers, with Federal Labor Union becoming designated as Local Union 5995 United Steel Workers of America, AFL-CIO. On January 7th,

1960 Steel Workers Union 5995 was duly elected and certified on January 15th, 1960 as the "successor collective bargaining representative under the collective bargaining agreement heretofore alluded to executed in 1956 and renewed by its very terms in September of 1959" (App. 4).

Commencing in and about the month of February, 1960, Carrier began a campaign designed to degrade and undermine the members of Local Union 5995 of the production and maintenance workers of Carrier. It attempted to have its employees work a 12 hour day in order to stock pile inventories in the event of a lockout or strike. The local in a duly constituted vote refused to work overtime and to walk out if any member was disciplined for this refusal. On March 2nd, 1960 Carrier in a televised press conference announced the reprimand of five officers of the local union. These reprimands were unjustified and in complete violation of the collective bargaining agreement. On March 3rd, 1960 Carrier closed its plant and locked out all its employees again in complete violation of the collective bargaining agreement in force between the parties. Picketing ensued with Carrier continuing its course of propaganda to alienate the members of Local 5995 from its leadership (App. 3 - 4).

Various legal proceedings before the National Labor Relations Board and the Courts thereafter occurred with negotiation concerning the lockout and work stoppage culminating in an oral agreement for a return to work (App. 4). This oral agreement, although accepted by the members of the local union, was violated and abrogated by the actions of Carrier. The picketing continued (App. 4).

On March 28th, 1960 Carrier announced it would take back anyone that wanted to go back to work and would give police protection. Thus the beginning of Carrier's

campaign to induce production and maintenance workers to abandon the local union and discontinue the strike. Picketing however, did continue as approximately 400-500 members of the local union remained on the picket lines. Next Carrier announced that those persons who were still " out on strike" must return to work or their jobs would be filled. Contrary to the collective bargaining agreement between the parties and the rights vested in the plaintiffs and others similarly situated, Carrier replaced plaintiffs and refused to permit plaintiffs to the present date to resume their employment under the same terms and conditions of employment and have blacklisted plaintiffs in the entire Syracuse area (App. 5). The events continued when on November 30th, 1960, Steel Workers withdrew as a representative of the plaintiffs and refused to intercede in their behalf. At that time the defendant Sheet Metal Workers Local 527 became the collective bargaining agent of the production and maintenance employees at Carrier (App. 5).

The essence of the claims for relief against the various defendants as summarized by the Second Circuit are:—

"Claims Against Carrier

> (1) Breach of the bargaining agreement under §301; (2) ousting Local 5895 as the bargaining representative through a campaign of industrial warfare resulting in the withdrawal of Local 5895's charter on November 30, 1961; (3) libel and slander of appellants; (4) violation of appellants 'rights under the "Bill of Rights" provisions of the LMRDA; and (5) acting in concert with Sheet Metal Workers and Local 527 to blacklist appellants to thwart their employment from May, 1960 on.

Claims Against Steelworkers

(1) Breach of contract embodied in the charter and by-laws granted to Local 5895 by Steelworkers under §301, in that Steelworkers failed to represent appellants diligently, fairly, and in good faith in proceedings before the court and the NLRB arising out of the industrial strife precipitated by the March 2, 1960 lockout by Carrier, and failed to afford to the Local 5895 membership the benefits of the funds available to the International Union to assist local unions in their industrial problems with management, and abandoned appellants and other members of Local 5895 as the collective bargaining representative of the production and maintenance workers; (2) violation of appellants' rights under the LMRDA; (3) aiding and abetting Carrier in the commission of unfair labor practices within the meaning of §8 of the National Labor Relations Act, 29 U.S.C. §158; and (4) breach of Steelworkers' duty of fair representation.

Claims Against Sheet Metal Workers and Local 527

(1) Breach of the "Agreement Among the Internationals" under §301; (2) libel and slander of appellants; (3) blacklisting appellants to thwart their employment from May, 1960 on; (4) malicious interference with appellants' property rights in a campaign of industrial warfare in concert with Carrier for appellants' loyalty to Local 5895; and (5) wrongful denial of membership in Local 527 (charged in the chronology of events but not under the heading of "wrongdoing").

Claims Against All Defendants

(1) Conspiracy to commit the above wrongs and interferences with appellants' rights charged substantively against the various defendants, and (2) deliberate ouster of appellants from union membership and job employment." (App. 6-7).

The District Court dismissed the Complaint against all defendants principally on the grounds of lack of subject matter jurisdiction and failure to state a claim upon which relief could be granted (App. 35 et seq.). On appeal, the United States Court of Appeals for the Second Circuit reversed and sustained the complaint against the defendant Carrier and defendant Steelworkers, while upholding the District Court's dismissal of the complaint against the defendant Sheet Metal Workers (App. 1 et seq.). It directed plaintiffs to file a further amended complaint and directed the action proceed in accordance with the opinion (App. 34).

The District Court opinion insofar as here relevant had held that the complaint against Steelworkers for breach of the duty of fair representation was time barred under the New York Statute of Limitations (App. 55-57). Charterizing this case as one wherein a "fiduciary obligation" was involved, the District Court held that the applicable statute of limitations was a three year period of time, and, as such, the complaint was time barred (*Ibid*). The Second Circuit, in reviewing this determination, and following the guidelines of this Court's decision in *Auto Workers Union v. Hoosier Cardinal Corp.*, 383 U.S. 696 (1966), characterized the entire course of events as being interrelated stating:

"The duty of the Union to its members in this regard is tied to the contractual obligations of Car-

> rier to the Union as representative of the employees and therefore resembles right-duty relationships between contracting parties, where one is bound to use good faith or its best efforts on behalf of the other. Thus the unfair representation claim against Steelworkers in this Court is intimately related to the §301 claim against Carrier since both stem from the unauthorized discharge of the appellants contrary to the terms of the labor agreement" (App. 29).

Turning to the characterization of these facts, the Court held them to be contractual in nature and applied the six year limitation as set out in New York CPLR Section 213 (2), which governs "an action upon a contractual obligation or liability express or implied" (App. 30). It is this determination that Steelworkers seeks to have this Court review at this preliminary interlocutory juncture of the case.

REASONS FOR NOT GRANTING THE WRIT

The case at bar does not involve a question of important labor policy required to be answered by this Court. This is particularly true in a case such as this where the action has not been tried, no answer has been filed, and the only pleading or evidence in the case is the amended complaint. The interlocutory and incomplete nature of this case is obvious. Certainly, if this Court is to review an issue, the full panorama of all the facts after a case is fully tried is an absolute prerequisite. In urging ripeness for review, Petitioner has set forth three grounds. It is respectfully submitted that all three lack the substantial merit required to cause this Court to exercise the extraordinary discretionary writ of certiorari.

ARGUMENT

POINT I

No important question of federal labor policy is presented in this case which requires resolution by this Court at this time.

In seeking to convince this Court that a Writ should be issued, Steelworkers contend in their first point, and again reiterated in their third point, that *Auto Workers Union v. Hoosier Cardinal Corp.*, 383 U.S. 696 (1966), left unresolved for future determination the question of whether in Section 301 actions, the judiciary should devise a uniform time limitation to effectuate the federal labor policy. A review of *Hoosier Cardinal* leads to the opposite conclusion. First, in *Hoosier Cardinal*, this Court considered the question of judicially "inventing" a uniform rule of timeliness with reference to an action instituted under Section 301. Specifically this Court was asked in that case to " • • • devise a uniform time limitation to close the statutory gap left by Congress • • • ", since section 301 did not contain a limitational period. 383 U.S. at 701. In rejecting this contention, this Court reviewed the same arguments as made by petitioner herein. In fact, this Court recognized that varying results would occur in section 301 cases depending upon the individual facts, the federal characterization of those facts, and the limitational periods as set forth in state laws, stating as an initial proposition that:—

> "It is true that if state limitations provisions govern Section 301 suits, these suits will lack a uniform standard of timeliness." 383 U.S. at 701.

Then, in emphatically rejecting this argument for uniformity, the Court stated:—

> "Thus, although a uniform limitations provision for Section 301 suits might well constitute a desirable statutory addition, there is no justification for the drastic sort of judicial legislation that is urged upon us." 383 U.S. 702-703.

Petitioner further asserts a factual difference between the 301 action in *Hoosier Cardinal* and the instant 301 suit. It is a distinction without a difference. Both are grounded in Section 301. As Justice Stewart stated in *Hoosier Cardinal*:—

> "Section 301 of the Labor Management Relations Act of 1947 confers jurisdiction upon the federal district courts over suits upon collective bargaining contracts. Nowhere in the Act, however, is there a provision for any time limitation upon the bringing of an action under §301. The questions presented by this case arise because of the absence of such a provision." 383 U.S. 697-698.
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>
> "It is clearly a federal question, for in 301 suits the applicable law is 'Federal Law, which the Court must fashion from the policy of our National Labor Law.'" 383 U.S. at 701.

And in fashioning that federal labor policy, later decisions by this Court have described and considered the interwoven nature of Section 301 claims against the employer a la *Hoosier Cardinal, supra,* (and the individual enforcement of those rights see *Smith v. Evening News Association,* 371 U.S. 195 (1962)) and a claim, arising out of the very same nucleus of operative facts, of breach of the duty

of fair representation against the union representing the employees at that time. This is the essential teaching of *Vaca v. Sipes*, 386 U.S. 171 (1967), and it is the *ratio decidendi* of the Second Circuit in this case in holding that the interwoven nature of the causes of actions were such that the contractual limitation must apply. *Vaca* is clear in elucidating this characterization:—

> "• • • It is obvious that the Courts will be compelled to pass upon whether there has been a breach of the duty of fair representation in the context of many section 301 breach of contract actions. If a breach of duty by the union and a breach of contract by the employer are proven, the Court must fashion an appropriate remedy. Presumably, in at least some cases, the Union's breach of duty will have enhanced or contributed to the employees' injury. What possibly sense could there be in a rule which would permit a Court that has litigated the fault of employer and union to fashion a remedy only with respect to the employer? Under such a rule, either the employer would be compelled by the Court to pay for the union's wrong — slight deterrence, indeed to future union misconduct — or the injured employee would be forced to go to two tribunals to repair a single injury. Moreover, the Board would be compelled in many cases either to remedy injuries arising out of a breach of contract, a task which Congress has not assigned to it, or to leave the individual employee without remedy for the union's wrong. Given the strong reason for not pre-empting duty of fair representations suits in general, and the fact that the courts in many 301 suits must adjudicate whether the union has breached its duty, we conclude that the courts may

> also fashion remedies for such a breach of duty." 386 U.S. at 187.
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> "• • • These remedy problems are difficult enough when one tribunal has all parties before it; they are impossible if two independent tribunals, with different procedures time limitations, and remedial powers, must participate." 386 U.S. at 188.

This is precisely what the Second Circuit did in measuring the instant claim:—

> "In the present case appellants' claim is essentially that Steelworkers unjustifiably refused to try to enforce the rights provided for them in the labor contract with Carrier—in particular, the right not to be wrongfully discharged. The duty of the union to its members in this regard is tied to the contractual obligations of Carrier to the union as representative of the employees and therefore resembles right-duty relationships between contracting parties, where one is bound to use good faith or its best efforts on behalf of the other. Thus the unfair representation claims against Steelworkers in this court is intimately related to the §301 claim against Carrier since both stem from the unauthorized discharge of the appellants contrary to the terms of the labor agreement. Even though these are two distinct rights capable of separate vindication, see *Czosek v. O'Mara, supra*, because of their interrelated nature, it would seem appropriate to apply the same limitation period to both claims. Indeed, in proving their case against Carrier appellants will of necessity "prove that the union as bargaining agent breached its duty of fair representa-

tion in its handling of the employees' grievance." *Vaca v. Sipes, supra*, at 186, 64 LRRM 2375. Therefore the traditional argument for a short limitation period, that claimants should not be permitted to bring actions based on stale evidence long after the parties had a right to assume that the claim would not be pursued, is simply inapplicable; no matter what the disposition of the claim against the union, the claim against the employer, based on the same evidence, will still go forward. And as the Supreme Court noted in *Vaca v. Sipes, supra*, at 187, 64 LRRM 2375, there would be no sense "in a rule which would permit a court that has litigated the fault of employer and union to fashion a remedy only with respect to the employer" and again at 188, 64 LRRM 2376, fn. 12, " • • • These remedy problems are difficult enough when one tribunal has all parties before it; they are impossible if two independent tribunals, with different procedures, *time limitations*, and remedial powers, must participate." (emphasis added.)

"We therefore hold that when a §301 suit is brought against an employer alleging breach of the collective bargaining agreement in conjunction with a claim that the union breached its fair representation duty to pursue the employee's grievance, the same period of limitations should be applied to both claims. In the present case, the proper limitation period to be applied to the contract claim against Carrier is the six-year limitation set out in N.Y. CPLR §213(2) for an action upon a contractual obligation or liability express or implied. *Auto Workers Union v. Hoosier Cardinal Corp., supra*, at

705-08. As this is the relevant limitation period, we hold that the claim against Steelworkers was improperly dismissed as untimely, because even the earliest date from which Steelworkers asserts the period would run, falls within the six-year limitation" (App. 28-30).

POINT II

There is no conflict between circuits with respect to the issues presented in the case at bar.

In seeking to convince this Court that conflict in the circuits exists relative to the issue presented, Steelworkers cites the case of *Fiqueroa de Arroyo v. Sindicato de Trabajadores Packinghouse*, 425 F.2nd 281 (1st Cir. 1970). First, it should be noted that *Trabajadores Packinghouse* was decided prior to the case at bar, and was a completed jury tried action. The instant case, in its infancy notwithstanding that the original complaint was filed over six years ago, has not even reached the stage where issues are joined by way of complaint and answer.

Secondly, the Second Circuit in this case carefully circumscribed its holding as applying solely to the federal characterization of the facts in this case, and not as providing a uniform limitational period in all cases involving fair respresentation claims. The Court studiously noted that the concept of fair representation encompassed items which can fall within the orthodox characterization of fiduciary responsibility as well as contractually grounded fair representation claims, specifically noting the teaching of *Auto Workers Union v. Hoosier Cardinal Corp., supra,*

that each case requires separate factual analysis. This is underscored by the Second Circuit's opinion footnote following the holding that the six year period of limitation applied in this case, the Court stating:—

> "It is again to be emphasized, however, that it does not follow that the limitation period for breach of contract and contract-related claims will apply to all suits brought against a union by a disgruntled member which are nominally classified within the fair representation rubric. In each instance the nature of the alleged act of commission or omission on the part of the defendant union must be examined to determine the appropriate federal characterization for statute limitations purposes. We therefore express no opinion as to whether, given allegations other than the union refusal to enforce the employers' contract rights, we might adopt the 'statutory duty' characterization of *Gray v. International Ass'n of Heat & Frost Insulators*, 418 F.2d 313, 318, 72 LRRM 2393 (6th Cir. 1969), the tort characterization of *Figueroa v. Sindicato de Trabajadores Packinghouse*, Slip Op. No. 7432, 1st Cir., April 17, 1970, 74 LRRM 2889, or some other appropriate classification." (Emphasis supplied). (App. 30, *n/n* 15).

Under these circumstance, a general statement of that a conflict in Circuits exists is inappropriate.

Moreover the characterization of the cause of action in *Trabajadores Packinghouse*, *supra*, was undoubtedly based upon the entire record and evidence in the case with the federal characterization of the cause of action therein contained being essentially tort in nature — the sole claim

relating to a question of discharge and the application of seniority to those circumstances. It does not approach by far, the complex and all encompassing events that are the subject matter of this suit. The projected proofs, it is submitted, will go much further and will show interaction a la Vaca v. Sipes, supra. The proofs await a full plenary trial.

Point III

The fashioning of a specific limitational period for causes of action such as the case at bar is not required and has been previously rejected by this Court.

In Point III of their Petition, Steelworkers seek to have this Court re-review its thinking in *Wooster Cardinal* that there is no uniform limitational provision for 301 suits, and in support thereof, renew their theme, expressed in the District Court and the Second Circuit, that a six month limitational period as in Section 10(b) of the National Labor Relations Act, 29 U.S.C. § 160(b) is appropriate. It is respectfully submitted that this Court in *Wooster Cardinal* reviewed at length the question of uniformity, clearly holding that there was no statute of limitations set forth in Section 301; that a uniform time limitation was not required by federal labor policy either to be gleaned from the statute itself or judicial fashioning; that such a result was specifically contrary to the Congressional intention in leaving a void in the legislation; and lastly recognizing that varying results would occur depending upon the federal characterization of the individual law suits and the state wherein the cause of action arose. Even the court in *Truhujulovo Parkinghouse*, supra, rejected the concept of a six month limitational period. The argument lacks merit.

CONCLUSION

Steelworkers seeks to obtain an interlocutory review in this case, which, while pending since 1965, has not even reached the stage of an answer being filed. It is respectfully submitted that this case is not ripe for review by this Court, no significant issues are presented for review, and the application for Writ of Certiorari should be denied.

Respectfully submitted,

/s/ Harold Krieger
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